

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SHARON P. HEARD,

Plaintiff,

vs.

**CIVIL ACTION
No. 02-2393-GTV**

**KANSAS CITY BOARD OF
PUBLIC UTILITIES, et al.,**

Defendants.

MEMORANDUM AND ORDER

Pro se Plaintiff, Sharon Heard, brings this action alleging that Defendants, Kansas City Board of Public Utilities, Leon Daggett, and the Unified Government of Wyandotte County/Kansas City, Kansas, discriminated against her based on her race, national origin, and sex in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (“Title VII”); discriminated against her based on her age in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. (“ADEA”); and retaliated against her in violation of Title VII. The case is before the court on Defendants’ motion to dismiss (Doc. 8). For the reasons set forth below, Defendants’ motion is granted.

Defendants’ first argument is that the entirety of Plaintiff’s complaint must be dismissed because she failed to file a timely charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”). “[F]iling a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of

limitations, is subject to waiver, estoppel, and equitable tolling.” Zipes v. Trans World Airlines, Inc. Indep. Fed. of Flight Attendants, 455 U.S. 385, 393 (1982). Under this standard, the defendant bears the initial burden of demonstrating that the plaintiff failed to timely comply with administrative filing requirements. Johnson v. Glickman, 155 F. Supp. 2d 1240, 1246 (D. Kan. 2001). If the defendant carries its burden, the burden shifts to the plaintiff to show that the time limitation should be subject to waiver, estoppel, or equitable tolling. Id.

In deferral states such as Kansas, a Title VII or ADEA claimant must file a charge of discrimination with the EEOC, or the appropriate state or local agency, within 300 days of each allegedly unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1) (Title VII); 29 U.S.C. § 626(d)(2) (ADEA); Peterson v. City of Wichita, 888 F.2d 1307, 1308 (10th Cir. 1989) (citations omitted). Here, Plaintiff filed her charge of discrimination with the EEOC on May 22, 2002. Therefore, Plaintiff must allege in her complaint that Defendant committed unlawful employment practices in the 300-day window between July 26, 2001 and May 22, 2002. Because Plaintiff alleges only that Defendants’ discriminatory conduct against her occurred in May 2001, Defendants have carried their burden of showing that Plaintiff failed to timely comply with administrative filing requirements.

Because Defendants have carried their burden, the burden shifts to Plaintiff to show that the time limitation should be subject to waiver, estoppel, or equitable tolling. Plaintiff has never responded to Defendants’ motion to dismiss, and has, therefore, not carried her burden. Accordingly, the court grants Defendants’ motion to dismiss the entirety of Plaintiff’s complaint

for failure to file a timely charge of discrimination with the EEOC.¹

Defendants also advance two additional arguments seeking dismissal of particular claims and specific Defendants. Because the court has already concluded that Plaintiff's complaint must be dismissed in its entirety for failure to file a timely charge of discrimination, the court need not address Defendants' remaining arguments.

IT IS, THEREFORE, BY THE COURT ORDERED that Defendants' motion to dismiss (Doc. 8) is granted.

The case is closed.

Copies of this order shall be transmitted to *pro se* Plaintiff and counsel of record for Defendants.

IT IS SO ORDERED.

Dated at Kansas City, Kansas, this 5th day of August 2003.

s/ G. Thomas VanBebber
G. Thomas VanBebber
United States Senior District Judge

¹ The court notes that Plaintiff not only failed to respond to Defendants' motion to dismiss, she also did not respond to an order to show cause that the court issued to her on June 24, 2003 regarding her failure to respond to Defendants' motion. Although the court grants Defendants' motion on the merits for Plaintiff's failure to file a timely charge of discrimination, the court concludes that it may also dismiss Plaintiff's case as a sanction for her failure to prosecute this action.